

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SALAM SHAKER ZORA,

Defendant-Appellant.

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UNPUBLISHED

July 5, 2011

No. 296508

Macomb Circuit Court

LC No. 2009-002137-FC

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

A jury convicted defendant of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to a prison term of 180 to 360 months for the murder conviction and to a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arise from the January 23, 2009, shooting death of his brother-in-law. The victim and his wife (defendant's sister) previously lived in defendant's home. After they moved out, defendant discovered that approximately \$250,000 was missing from a hideaway at his residence. Defendant suspected that the victim stole the money. On January 20, 2009, defendant confronted the victim about the money and, according to defendant, the victim agreed to go to their church later that week to swear on a Bible to his innocence. Three days later, defendant went to the victim's residence unannounced to again discuss the missing money. Defendant was armed with a gun and was accompanied by his two brothers. Defendant ultimately shot the victim five times. Three of the gunshots were to the back of the victim's body. There was no evidence of a struggle in the residence. Defendant presented a claim of self-defense through himself and his two brothers. The defense theory at trial was that the victim charged toward defendant while shouting an Arabic war death cry and while holding a butcher knife in his raised right hand and a two-pronged barbecue fork in his left hand.

**I. PROSECUTOR'S CONDUCT**

Defendant first argues that he is entitled to a new trial because the prosecutor knowingly presented "false and nonexistent" evidence through an erroneous stipulation that no fingerprints, DNA, or blood was found on a knife and fork that were recovered at the scene. Defendant contends that, although trial counsel agreed to the stipulation, it was false because a latent print

was discovered on the fork, and no testing for DNA or blood was actually performed on either instrument.

This Court reviews a trial court's decision on a motion for a new trial for an abuse of discretion. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). Further, "in order for prosecutorial misconduct to constitute constitutional error, the misconduct must have so infected the trial with unfairness as to make the conviction a deprivation of liberty without due process of law." *People v Blackmon*, 280 Mich App 253, 269; 761 NW2d 172 (2008).

A prosecutor's knowing use of false evidence violates a defendant's right to due process. *Napue v Illinois*, 360 US 264, 269; 79 S Ct 1173; 3 L Ed 2d 1217 (1959). To prevail under *Napue*, a defendant must show that (1) the evidence was actually false; (2) the prosecution knew that the evidence was actually false; and (3) that the false testimony was material. *Id.* at 271. "Material" means that there is a reasonable likelihood that the false evidence could have affected the verdict. See *People v Herndon*, 246 Mich App 371, 417-418; 633 NW2d 376 (2001).

As an initial matter, defendant's reliance on a police report statement by the victim's four-year-old son and a letter allegedly written by Manal Petros to support defendant's claim that the prosecutor knowingly presented false evidence, is misplaced because neither the letter nor the police report is part of the lower court record. It is impermissible for a party to enlarge the record on appeal. *People v Williams*, 241 Mich App 519, 524 n 1; 616 NW2d 710 (2000); see also *People v Seals*, 285 Mich App 1, 20-21; 776 NW2d 314 (2009).

In any event, we agree with the trial court that defendant has not shown that the stipulation was actually false. The parties stipulated that no prints, DNA, or blood were found on the victim's knife or fork. It is undisputed that no fingerprints were found on the knife. With regard to the fork, a latent "lift" was recovered from the stainless steel portion of the fork near the tines. The forensic scientist and fingerprint expert reported, and later testified at a *Ginther*<sup>1</sup> hearing, that the "latent lift" had "no latent prints of comparison value." She explained that a latent lift is not synonymous with an identifiable fingerprint, so the statement that there were no fingerprints is accurate. Further, although there was no testing for blood or DNA on either the knife or the fork, there also is no evidence that either substance was on either instrument.

Furthermore, there is no reasonable likelihood that the stipulation affected the jury's verdict. The evidence shows that a latent, unusable lift was discovered on the stainless steel portion of the fork near the tines. The scenario described by the defense witnesses did not present circumstances where the victim's fingerprint would have been transferred to the tines of the fork. Rather, the defense witnesses testified that the victim held the fork by the handle in his palm, inside his closed fist. Defendant makes much of the fact that there was a latent, unusable lift on the fork, while ignoring other properly admitted evidence that rebuts his self-defense claim. The evidence indicates that defendant went to the victim's house unannounced,

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<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

accompanied by his two brothers, because he believed that the victim had stolen \$250,000 from him. Defendant instigated the confrontation at the victim's home, and brought a loaded weapon to the home. According to the defense witnesses, defendant was angry about the victim's theft, and the victim refused to go to the church to swear on a Bible that he had not taken the money. Defendant admitted shooting his gun toward the victim repeatedly. The autopsy revealed that the victim was shot five times, none at close range. Three shots were to the back, and two of the three gunshot wounds to the back occurred while the victim was down or close to the floor. There was no evidence of a struggle. Given the substantial evidence against defendant, to the extent the stipulation could be considered false, it was not material.

In a related claim, defendant also argues that the prosecutor impermissibly used the false stipulation during opening statement and closing argument. In opening statement, when listing certain "undisputed facts," the prosecutor stated that the fork and knife has "no evidentiary value," and "no fingerprints, no DNA, no blood as to anyone involved, possibly involved in this incident."

"The purpose of an opening statement is to tell the jury what the advocate proposes to show." *People v Moss*, 70 Mich App 18, 32; 245 NW2d 389 (1976). Viewed in context, the prosecutor's reference during opening statement was designed to show that he intended to prove during trial that there was no evidence on the fork and knife, and that defendant's self-defense claim was not credible. The statement was based on the stipulation, which was accurate; therefore, the prosecutor did not engage in misconduct by referring to it during opening statement and closing argument. In closing argument, the prosecutor was free to argue the evidence and all reasonable inferences arising from it as they related to his theory of the case. See *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

With regard to closing argument, defendant argues that the prosecutor impermissibly used the stipulation to falsely assert that the defense witnesses wiped the fork clean and staged the scene. We agree that the prosecutor's remark that the fork was clean was inaccurate because a latent lift was present. But the defendant bears the burden of showing actual prejudice, *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006), and reversal is only warranted if the error affected the outcome of the proceedings. See *Blackmon*, 280 Mich App at 269.

Viewed in context, the prosecutor's remark did not cause defendant's conviction. The remark was focused on establishing the lack of evidence to support defendant's self-defense claim. While there was no evidence that the fork and knife had been wiped clean, it is true that the victim's prints were not on either instrument, and neither the fork nor the knife were found in close proximity to the victim's body. In addition, as previously indicated, there was evidence that defendant was angry because he believed that the victim had stolen a large amount of money from him, that he arrived at the victim's house unannounced and accompanied by his two brothers, that he was armed with a weapon, and that he shot the victim multiple times, including three times in the back. Moreover, the trial court instructed the jury that the lawyers' statements and arguments are not evidence, and that the jury was to decide the case based only on the properly admitted evidence. These instructions were sufficient to dispel any possible prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001). "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

For these reasons, the trial court's decision to deny defendant's motion for a new trial based on the prosecutor's conduct, after first evaluating the accuracy of the stipulation and the prosecutor's comments, was a principled decision and, therefore, not an abuse of discretion.

## II. *BRADY* VIOLATION

Next, defendant argues that he was denied his right to due process because the prosecutor failed to timely provide discovery, contrary to *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963). We disagree. Because defendant did not raise a *Brady*-violation claim below, we review this unpreserved claim for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999).

A criminal defendant has a due process right of access to certain information possessed by the prosecution if that evidence might lead a jury to entertain a reasonable doubt about a defendant's guilt. *People v Lester*, 232 Mich App 262, 280; 591 NW2d 267 (1998), citing *Brady*, 373 US 83. "Impeachment evidence as well as exculpatory evidence falls within the *Brady* rule because, if disclosed and used effectively, such evidence 'may make the difference between conviction and acquittal.'" *Lester*, 232 Mich App at 281 (citation omitted). To establish a *Brady* violation, a defendant must prove: (1) that the state possessed evidence favorable to the defendant; (2) that the defendant did not possess the evidence and could not have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. *Id.* at 281-282.

### A. FORENSIC REPORT

There is no indication that the prosecutor suppressed the forensic report. During post-trial proceedings, the prosecutor averred that the report would have been provided to the defense thorough discovery. Defense counsel acknowledged that it was possible that the forensic report was misplaced among the more than 200 pages of discovery provided to the defense. He also acknowledged that he knew from a police report that a latent print was found on the fork, and that the knife and fork were being tested. Thus, the defense was aware of the latent lift and the testing, and defendant could have followed through to obtain the report with reasonable diligence had he planned to review it. Indeed, trial counsel admitted that he did not consider the forensic report relevant to defendant's case. Moreover, given the substance of the forensic report and the overwhelming evidence against defendant, the absence of the forensic report was not the difference between conviction and acquittal.

### B. MANAL PETROS'S LETTER

Likewise, there is no indication that the prosecutor either possessed or suppressed a letter written by Manal on the second day of the *Ginther* hearing. Further, Manal is defendant's sister, and, accordingly, defendant could have discovered with reasonable diligence any information she allegedly had about the shooting. Moreover, according to defendant's trial testimony, Manal did not witness the events leading up to the shooting or the shooting itself, but came into the room afterward. Thus, despite her claim that she arrived in the room so quickly that her brothers could not have "staged the scene," her proposed statement would have done little to rebut

defendant's self-defense claim given the physical evidence that defendant shot the victim five times, three times in the back, and none at close range. Further, although Manal claimed that the victim knew that defendant was planning to visit to talk about the money, the defense witnesses admitted that they did not call the victim before going to his house. Because there is no basis for finding a *Brady* violation, defendant has failed to show a plain error.

### III. EFFECTIVE ASSISTANCE OF COUNSEL

Defendant further argues that he was denied the effective assistance of counsel due to numerous errors on the part of trial counsel. Again, we disagree.

Although defendant moved for a new trial on the ground of ineffective assistance of counsel and a *Ginther* hearing was held, defendant raises additional ineffective assistance of counsel claims on appeal. Our review of those unpreserved issues is limited to mistakes apparent from the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). With regard to those issues that were raised in the trial court, we review the trial court's factual findings for clear error and its constitutional determinations de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Effective assistance of counsel is presumed and defendant bears a heavy burden of proving otherwise. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's error. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

#### A. THE STIPULATION

Defendant argues that trial counsel was ineffective for entering into an erroneous stipulation without first reviewing the forensic report, which contained contrary findings. As previously discussed, the stipulation was accurate to the extent that the latent "lift" found on the stainless steel part the fork had "no latent prints of comparison value." Further, given the location of the latent lift and the defense witnesses' description of how the victim held the fork, evidence that the latent left existed would not have supported defendant's self-defense claim. Although there was no testing for blood and DNA, there is no evidence that either substance was actually on the knife or the fork, and defendant has failed to explain how any DNA would have altered the outcome at trial. Moreover, given the substantial unchallenged evidence as discussed in section I, *supra*, defendant has not established that but for the alleged erroneous stipulation, the result of the trial would have been different.

#### B. UNPRESERVED CLAIMS

We reject defendant's claim that trial counsel was ineffective for failing to call various witnesses to support his self-defense theory. "Ineffective assistance of counsel can take the form of a failure to call a witness or present other evidence only if the failure deprives the defendant of a substantial defense." *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), mod

453 Mich 902 (1996). A defense is substantial if it might have made a difference in the outcome of the trial. *Id.*

Here, defendant claims that trial counsel should have called (1) the victim's four-year-old son to testify that defendant shot his father after his father approached defendant with a knife, (2) two liquor control commission representatives to testify regarding defendant's whereabouts shortly before going to the victim's house, (3) Tasab Zelem to testify that the victim stole defendant's money, (4) Manal to testify what she observed immediately after the shooting, and (5) Hanna Batris and Sabhan Kejbou to testify about instances when the victim was violent. Defendant failed to call these witnesses at the *Ginther* hearing and he has not provided any affidavits of their proposed testimony. Further, he has not identified any evidence *of record* to establish that they would have provided testimony favorable to the defense that may have affected the outcome of the trial. On appeal, defendant has submitted letters from Manal and Kejbou, and a police report concerning the victim's four-year-old son's statement. Because these letters and police report were not offered below, they are not part of the existing record, MCR 7.210(A)(1). Defendant's unsupported assertion that the witnesses would have testified and supported his defense is insufficient to demonstrate that he was deprived of a substantial defense. *In re Ayres*, 239 Mich App 8, 22; 608 NW2d 132 (1999).

Defendant also claims that the trial counsel should have retained a self-defense expert to testify regarding the self-defense training provided to people who are licensed to carry firearms. The failure to call an expert witness "only constitutes ineffective assistance of counsel if it deprives the defendant of a substantial defense." *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Trial courts have clear discretion to admit or exclude expert testimony. See *People v Beckley*, 434 Mich 691, 713; 456 NW2d 391 (1990). The threshold determinations are whether expert testimony will be helpful to the jury and relevant to the case. *People v Christel*, 449 Mich 578, 592; 537 NW2d 194 (1995).

Contrary to defendant's argument, trial counsel's failure to call an expert witness was not objectively unreasonable. Defendant has failed to make the necessary showing that the proposed expert testimony would not have assisted the trier of fact in making its decision. See MRE 702. Defendant's self-defense theory was based on his claim that the victim charged toward him while armed with a butcher knife and a two-pronged meat fork. The jury could determine from the defense witnesses' testimony and the physical evidence whether the victim's alleged conduct caused defendant to have an honest and reasonable belief that his life was in danger. Expert testimony regarding defendant's concealed weapons training would not have been relevant to assist the jury in determining any fact at issue. Consequently, defendant cannot establish a claim of ineffective assistance of counsel on this basis.

### C. THEKRA ZORA

Defendant argues that trial counsel should have called his sister-in-law to testify that, at defendant's behest, she made an appointment with a priest for the victim to swear on the Bible, and that defendant was at her store shortly before going to the victim's house. In the trial court, defendant submitted a letter purportedly authored by Thekra indicating that she did not appear at trial because of threats against her by the victim's family. On appeal, defendant has not demonstrated the failure to call Thekra at trial deprived him of a substantial defense. Defendant

and his brothers testified in support of defendant's version of the events. Defendant testified that three days before the shooting, the victim came to his house and, following a discussion, the victim agreed to meet at their church to swear on a Bible, and that a meeting was scheduled for the following Friday or Saturday. At trial, defendant's brother Hamid testified that he was also at defendant's house, and Hamid corroborated defendant's testimony that defendant told the victim that if he did not take the money, "we go to the church, put [his] hands in the bible[] and [defendant] don't want nothing else from [him]," and that a meeting was scheduled. Defendant testified that on the morning of the shooting, he met his sister-in-law, Hamid, and some liquor control commission representatives at his sister-in-law's store in Detroit. Hamid testified that he confirmed that he and defendant were at the store that morning. Hamid and defendant's other brother Maher both testified that they went to the victim's house where defendant talked to the victim about going to a church to see a priest to swear on the Bible that he did not take the money. In sum, because the proposed evidence was presented at trial through other witnesses, Thekra's testimony would only have been cumulative and there is no reasonable probability that the outcome would have been different had she testified.

#### D. REMOVAL OF JURORS

Defendant's last ineffective assistance of counsel claim is that trial counsel should have requested the removal of the entire jury pool, or at least one other juror, because of some prospective jurors' negative opinions about Chaldeans, which defendant now maintains tainted the entire pool. During voir dire, a prospective juror stated that he has "not [had] good experiences" with Chaldeans, and would be prejudiced toward the defense. Defense counsel asked several follow-up questions and moved to dismiss the juror for cause, and the trial court excused the juror. Thereafter, another prospective juror indicated that he had witnessed a fight between six Chaldeans on the morning of the first day of trial. When asked how he knew they were speaking Chaldean, the prospective juror responded that "they looked like the people who work at the gas stations and party stores in this area." The trial court questioned the juror, and ultimately removed him for cause. Defendant now argues that trial counsel should have moved to excuse the entire jury pool because the excused jurors' comments tainted the entire jury. We disagree.

A defendant has a right to a fair and impartial jury. *People v Budzyn*, 456 Mich 77, 88; 566 NW2d 229 (1997). To show the denial of a fair and impartial jury in this context, a defendant must show that the jury was exposed to extraneous influences and that the extraneous influences "created a real and substantial possibility that they could have affected the jury's verdict." *Id.* at 88-89. A reviewing court must closely examine the entire voir dire to determine if an impartial jury was impaneled. *People v Jendrzewski*, 455 Mich 495, 516-517; 566 NW2d 530 (1997). Due process only demands that jurors act with a "lack of partiality, not an empty mind." *Id.* at 519.

The record does not support defendant's claim that the jury was exposed to extraneous influences that tainted it. Defendant has not identified any record evidence that any impaneled juror was biased against him because of his nationality. Although the jury heard the prospective jurors' comments, trial counsel and the court immediately addressed the comments. The two jurors were excused. The trial court instructed the remaining members of the jury pool that the fight witnessed by the juror had "absolutely nothing to do with the parties in this case, the

defendant or any witness.” The trial court and counsel also had an opportunity to question the remaining prospective jurors to test their reaction to Chaldeans. The impaneled jurors explicitly indicated that they could be fair and impartial. The purpose of voir dire is to expose potential juror bias so that a defendant may be tried by a fair and impartial jury. *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). The trial court instructed the jury on the presumption of innocence, to consider only the evidence properly admitted in court and, before deliberations, reminded the jury that it took an oath to decide the case based only on the properly admitted evidence and the law as instructed by the court. See *Graves*, 458 Mich at 486. Because the record does not disclose a basis for trial counsel to request the removal of any additional jurors, this ineffective assistance of counsel claim cannot succeed.

#### IV. EVIDENCE

##### A. MANAL’S LETTER

Defendant argues that the trial court abused its discretion by refusing to admit his sister’s letter at the *Ginther* hearing to prove that trial counsel was ineffective for not calling her to testify. We disagree. Contrary to what defendant argues, there is no indication that Manal’s letter was ever properly offered into evidence.

Defendant claims that on the day of closing arguments at the *Ginther* hearing, Manal unexpectedly showed up and attempted to personally give a letter to the court. The letter was apparently returned along with a memo explaining that ex-parte communication with a judge is not permitted, and that such matters must be addressed in open court. There is no indication in the record that the letter was discussed or that defendant made any attempt to properly present it to the court for its review. Further, after closing arguments, the following exchange occurred:

*The court:* Were there any other exhibits that this court should receive at this time in conjunction with the arguments? I have exhibits, People’s Exhibits 1 through 5.

*Defense counsel:* I believe not, your Honor. [Emphasis added.]

Contrary to what defendant suggests, the letter is not part of the lower court record. Further, although a trial court’s decision to admit evidence is reviewed for an abuse of discretion, *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003), the trial court here did not have an opportunity to exercise its discretion because Manal’s letter was never properly presented to the court. Therefore, defendant’s claim that the trial court abused its discretion by refusing to admit the letter is misplaced. Moreover, because defendant specifically informed the court that there were no defense exhibits, he has waived appellate review of this issue. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). Defendant’s waiver extinguished any error. *Id.* at 216.

##### B. DENIAL OF POST-TRIAL DISCOVERY REQUEST

Defendant issued a subpoena duces tecum to the forensic scientist and the lead detective to appear to testify at the *Ginther* hearing, and also requested access to the fork, the forensic scientist’s notes, a reproduction of the print, and copies of the comparison prints. Defendant now

argues that the trial court abused its discretion by denying his post-trial discovery attempts. We disagree.

Issues involving a trial court's ruling on a discovery matter in a criminal case are reviewed for an abuse of discretion. *People v Lemcool*, 445 Mich 491, 497; 518 NW2d 437 (1994). Criminal defendants do not have a general right to discovery. *People v Stanaway*, 446 Mich 643, 680; 521 NW2d 557 (1994). Discovery is generally left to the trial court's discretion and will be ordered when "the thing to be inspected is admissible in evidence and a failure of justice may result from its suppression." *Id.* (citation and quotations omitted). Defendant bears the burden of presenting the court with facts indicating that the information is necessary to the interests of a fair trial and a proper preparation of a defense and not simply part of a "fishing expedition." *Id.*

In this case, the discovery requested by defendant was not necessary to present his case at the *Ginther* hearing. Defendant sought to prove that trial counsel was ineffective for failing to review the forensic report. At the hearing, defense counsel acknowledged that he should have done so. Further, the forensic report was presented and evaluated, the forensic scientist testified at length about her report and findings, and defense counsel cross-examined her extensively about her opinion that no fingerprints were found on the fork. Defendant offers only generalized assertions that there may be useful evidence on the fork and the related documents. There were no specific allegations that would be relevant to proving a claim of ineffective assistance of counsel, and the trial court properly characterized defendant's efforts as a "fishing expedition." Consequently, the trial court's denial of defendant's post-trial discovery request was not an abuse of discretion.

## V. JUROR MISCONDUCT

Defendant lastly argues that he is entitled to a new trial because the jury impermissibly conducted an experiment that exposed them to extraneous information. We disagree.

This Court reviews a trial court's ruling on a motion for a mistrial for an abuse of discretion. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *Id.* (citation omitted).

Consistent with a defendant's right to a fair and impartial jury, "jurors may only consider the evidence that is presented to them in open court." *Budzyn*, 456 Mich at 88. "Any conduct, even if misguided, that is inherent in the deliberative process is not subject to challenge or review." *People v Fletcher*, 260 Mich App 531, 540-541; 679 NW2d 127 (2004).

Defendant's claim fails because he has not presented any admissible evidence to support his argument. He relies on his trial attorney's affidavit, in which counsel avers that after the jury was discharged, certain jurors stated that they tested the fork and knife to determine if fingerprints would be left if the items were handled. Defense counsel's affidavit concerning the jurors' statements constitutes inadmissible hearsay. See *Budzyn*, 456 Mich at 92, n 14. Moreover, even if we were to consider trial counsel's affidavit, the jurors' test or reenactment cannot be characterized as extraneous information. It was based on properly admitted

testimonial and physical evidence introduced at trial, remained within the purview and scope of that evidence, collectively conducted by the jurors, and occurred in the jury room during the deliberative process. See *Fletcher*, 260 Mich App at 542-543. The jurors were free to consider and scrutinize the evidence that they believed was important to the resolution of the case, including whether prints would be left on the handle of the knife and fork. Because defendant claims error in the jury's deliberative process rather than improper influence by extraneous or outside factors, he has failed to establish a right to relief. *Budzyn*, 456 Mich at 91; *Fletcher*, 260 Mich App at 540-541. Consequently, the trial court's denial of defendant's motion for a mistrial on this basis was not an abuse of discretion.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ David H. Sawyer  
/s/ Jane M. Beckering